

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v. CRIMINAL NO. 05-22 ERIE

PIERRE DUVON BOYD

CHANGE OF PLEA

Proceedings held before the HONORABLE
SEAN J. McLAUGHLIN, U.S. District Judge,
in Courtroom C, U.S. Courthouse, Erie,
Pennsylvania, on Friday, September 2, 2005.

APPEARANCES:

MARSHALL J. PICCININI, Assistant United States
Attorney, appearing on behalf of the Government.

ADAM B. COGAN, Esquire, appearing on behalf of

Ronald J. Bench - Official Court Reporter

2

1 PROCEEDINGS

2

3 (Whereupon, the Change of Plea proceedings began at
4 1:10 p.m., on Friday, September 2, 2005, in Courtroom C.)

5

6 THE COURT: Would you come up to the podium, please.

7 All right. Mr. Boyd, I'm informed that you wish to change the

8 plea that you have previously entered at Count One of

9 Indictment No. 05-22 Erie to a plea of guilty, is that correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You're going to have to keep your voice

12 up, Mr. Boyd, speak into the microphone, speak loudly so the

13 court reporter can get you down, okay?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Before accepting your guilty plea, there
16 are a number of questions that I will ask you to make certain
17 it is a valid plea. If you don't understand any question,
18 please tell me and I will explain it to you. If at any time
19 you wish to consult with Mr. Cogan, please tell me that, I will
20 give you the opportunity to consult. I give you these
21 instructions because it is essential to a valid plea that you
22 understand every question before you answer it. Would you
23 please raise your right hand.

24 (Whereupon, the Defendant, PIERRE DUVON BOYD, was
25 sworn.)

3

1 THE COURT: Do you understand that now that you have
2 been sworn, your answers to my questions are subject to the
3 penalties of perjury or of making a false statement if you do
4 not answer truthfully?

5 THE DEFENDANT: Yes.

6 THE COURT: Would you please tell me your full name?

7 THE DEFENDANT: Pierre Duvon Boyd.

8 THE COURT: How old are you, sir?

9 THE DEFENDANT: Twenty-three.

10 THE COURT: How far did you go in school?

11 THE DEFENDANT: The 10th grade.

12 THE COURT: You completed the 10th grade or got up
13 to the 10th grade?

14 THE DEFENDANT: Yes, I got up to the 10th grade.

15 THE COURT: Are you able to communicate in English?

16 THE DEFENDANT: Yes.

17 THE COURT: Mr. Cogan, have you been able to
18 communicate with your client in English?

19 MR. COGAN: Yes, I have, your Honor.

20 THE COURT: Have you taken any drugs or medication
21 or have you drunk any alcoholic beverages in the past 24 hours?

22 THE DEFENDANT: No, sir.

23 THE COURT: Are you now or have you recently been
24 under the care of a physician or a psychiatrist?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you now or have you recently been

2 hospitalized or treated for any type of a narcotic addiction?

3 THE DEFENDANT: No, sir.

4 THE COURT: Do you understand what's happening here
5 today?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Does either counsel have any doubt about
8 the competence of this defendant to plead guilty at this time
9 to the charge contained in the Indictment; Mr. Piccinini?

10 MR. PICCININI: No, your Honor.

11 THE COURT: Mr. Cogan?

12 MR. COGAN: I have absolutely none, your Honor.

13 THE COURT: I find this defendant is competent to
14 plead. Do you have a lawyer with you today?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: What's his name?

17 THE DEFENDANT: Adam Byron Cogan, sir.

18 THE COURT: Have you had a sufficient opportunity to
19 discuss your case with him?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you satisfied with the work that Mr.
22 Cogan has done for you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that if you continue
25 to plead not guilty and do not change your plea, you would have

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1 the right to be assisted by an attorney at the trial of this
2 charge against you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand that if you did not
5 enter a guilty plea and if you qualified financially, you would
6 be entitled to be assisted by an attorney at no cost to you at
7 every phase of the processing of these charges against you?

8 THE DEFENDANT: Yes.

9 THE COURT: And do you understand that if you did
10 not plead guilty and if there were a trial, under the
11 Constitution and laws of the United States, you would be
12 entitled to a speedy trial by a judge and jury on the charge
13 contained in the Indictment?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that if there were a
16 trial, you would be presumed to be innocent at the trial of the
17 charge against you?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that if there were a
20 trial, the government would be required to prove your guilt by
21 competent evidence and beyond a reasonable doubt before you
22 could be found to be guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that if there were a
25 trial, you would not have to prove that you were innocent?

6

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that if there were a
3 trial, the jury would have to be unanimous in order to find you
4 guilty of the charge?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that if there were a
7 trial, you would have the right to participate in the selection
8 of the jury; that you would have the right to strike or
9 eliminate any prospective juror if it was demonstrated that the
10 juror would be unable to render a fair and impartial verdict;
11 and that you would have the right to strike or eliminate ten

12 jurors from the jury and one alternate juror, without giving

13 any reason at all for so doing?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that if there were a

16 trial, the witnesses for the government would have to come to

17 court, they would have to testify in your presence?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that if there were a

20 trial, your counsel could cross-examine the witnesses for the

21 government, object to evidence offered by the government and

22 then offer evidence on your behalf?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that if there were a

25 trial, the government would have to pay witness fees to

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1 witnesses which you wished to call if you qualified as being

2 financially unable to pay those fees?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And do you understand that if there were

5 a trial, you would have the right to testify if you chose to?

6 THE DEFENDANT: Yes.

7 THE COURT: And do you understand that if there were
8 a trial, you would have the right not to testify and that no
9 inference or suggestion of guilt could be drawn from the fact
10 that you did not testify?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: If you plead guilty and I accept your
13 plea, do you understand that you will waive your right to a
14 trial and the other rights which I have mentioned to you, that
15 there will be no trial and that I will enter a judgment of
16 guilt and sentence you on the basis of your guilty plea after
17 considering a presentence report?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: If you plead guilty, do you also
20 understand that you will also have to waive your right not to
21 incriminate yourself, because I will ask you questions about
22 what you did in order to satisfy myself that you are guilty as
23 charged and that you will have to acknowledge your guilt?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now that I have mentioned your rights to

1 you, do you still wish to plead guilty?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you received a copy of the

4 Indictment naming you and have you discussed with Mr. Cogan the

5 charge in the Indictment to which you intend to plead guilty

6 today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that you are charged

9 in the Indictment as follows: "On or about January 28, 2005,

10 in the County of Erie, in the Western District of Pennsylvania,

11 the defendant, Pierre Duvon Boyd, did knowingly, intentionally

12 and unlawfully possess with intent to distribute five grams or

13 more of a mixture and substance containing a detectable amount

14 of cocaine base, in the form commonly known as crack, a

15 Schedule II controlled substance.

16 In violation of Title 21, United States Code,

17 Sections 841(a)(1) and 841(b)(1)(B), et seq." Do you

18 understand the charge?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that in order for the

21 crime of possession with intent to distribute five grams or
22 more of cocaine base, in violation of Title 21 U.S.C. 841(a)(1)
23 and Section 841(b)(1)(B), et seq., to be established, the
24 government must prove all of the following essential elements
25 beyond a reasonable doubt:

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1 That on or about the date set forth, the defendant
2 possessed with the intent to distribute the controlled
3 substance charged in the Indictment.

4 That the defendant did so knowingly and
5 intentionally.

6 And that cocaine base is a Schedule II controlled
7 substance, pursuant to 21 U.S.C. 812(c), Schedule (II)(a)(4).

8 And that the mixture or substance containing a
9 detectable amount of cocaine base was five grams or more.

10 Do you understand the elements of this crime?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that the maximum
13 possible penalties are a term of imprisonment of not less than
14 five years to a maximum of 40 years.

15 A fine not to exceed \$2 million.

16 A term of supervised release of at least four years.

17 For a second or subsequent felony drug conviction

18 that is final, whether federal, state or foreign:

19 A term of imprisonment of not less than 10 years to

20 a maximum of life.

21 A fine not to exceed \$4 million.

22 A term of supervised release of at least eight

23 years.

24 As well as a mandatory special assessment of \$100.

25 Do you understand the maximum penalties for this

10

1 crime?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Has anybody made any threat to you or to

4 anybody else that has caused you in any way to plead guilty

5 today?

6 THE DEFENDANT: No, sir.

7 THE COURT: Has there been a plea agreement, Mr.

8 Piccinini?

9 MR. PICCININI: There has, your Honor, I've marked
10 the document Government Exhibit 1 for identification. It has
11 previously been provided to counsel and the defendant, and it
12 depicts their signatures on the document.

13 The significant terms of the plea agreement includes
14 the defendant's intention at paragraph A-1 to enter a plea of
15 guilty to Count One of the Indictment.

16 In addition, your Honor, the defendant waives his
17 right to take a direct appeal from his conviction or sentence
18 under 28 U.S.C. Section 1291 or 18 U.S.C. Section 3742, with
19 the limited exceptions that if the United States appeals the
20 sentence, he may appeal the sentence. And if the sentence
21 exceeds the applicable statutory limits set forth in the United
22 States Code, or if this court unreasonably exceeds the
23 guideline range determined by the court, the defendant may
24 appeal under that circumstance as well.

25 The defendant also waives his right to file a

1 collateral attack to his conviction under Title 28 United
2 States Code, Section 2255.

3 At paragraph B-3, the government intends to
4 recommend a three-level reduction for the defendant's
5 recognized acceptance of responsibility.

6 At paragraph C-1, we set forth the maximum penalties
7 that the court has explained here today.

8 At paragraph C-2, the parties stipulate that the
9 type and quantity of controlled substance attributable to the
10 defendant in this case was 27.1 grams of cocaine base.

11 Those would be the significant terms of the plea
12 letter.

13 THE COURT: All right.

14 MR. PICCININI: Your Honor, if we may approach side
15 bar.

16 THE COURT: All right.

17 (At side bar on the record.)

18 THE COURT: Go ahead.

19 MR. PICCININI: I requested to come up here because
20 I don't know the identities of the other people in the
21 courtroom. The plea letter includes several paragraphs
22 concerning his cooperation with the government. And our
23 intention at time of sentencing to file a downward departure
24 motion if the U.S. Attorney's office determines his cooperation

25 to be substantial.

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1 THE COURT: All right, that's fine.

2 (End of discussion at side bar.)

3 MR. PICCININI: Your Honor, I've marked the document
4 as Government Exhibit 1, would request its admission into
5 evidence.

6 THE COURT: It's admitted. Mr. Boyd, did you have
7 an opportunity to read and review the plea agreement before you
8 came to court today?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And do you agree with all the terms and
11 conditions?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And did you discuss the plea agreement
14 with your lawyer?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And you understood the plea agreement,
17 is that right?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Did you sign and date the plea
20 agreement?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you understand by signing the
23 plea agreement, you are attesting with your signature that you
24 agree with all the terms and conditions?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: All right. Now, has anyone made any
2 promise, other than the plea agreement, that has caused you to
3 plead guilty today?

4 THE DEFENDANT: No, sir.

5 THE COURT: Do you understand that I'm not required
6 to accept the plea agreement that you have entered into and may
7 reject it. But if I reject the plea agreement, you will be
8 advised in open court and you would have the opportunity to
9 withdraw your guilty plea. If the plea agreement is rejected,
10 you may nevertheless continue your plea of guilty, and if you
11 persist in your guilty plea after the plea agreement is
12 rejected, your sentence, or the disposition of your case, may

13 be less favorable to you than that proposed in the plea

14 agreement. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that the offense to

17 which you are pleading guilty today is a felony offense; and

18 that if your plea is accepted, you will be adjudged guilty of

19 the offense and that such adjudication may deprive you of

20 valuable civil rights; such as the right to vote, hold public

21 office, serve on a jury, and the right to possess any type of

22 firearm. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Under the Sentencing Reform Act of 1984,

25 the United States Sentencing Commission has issued guidelines

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1 for judges to follow in determining sentences in criminal cases

2 for offenses occurring after November 1, 1987. Have you and

3 Mr. Cogan talked about how the Sentencing Guidelines might

4 apply to your case and the fact that the suggested guideline

5 ranges are now advisory by virtue of two recent Supreme Court

6 decisions?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that the court will
9 not be able to determine the advisory guideline sentence for
10 your case until after the presentence report has been completed
11 and you and the government have had an opportunity to challenge
12 the facts reported by the probation officer?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that after it has been
15 determined what guideline sentence does apply to a case, the
16 judge has the authority, in some circumstances, to impose a
17 sentence that is more severe or less severe than that called
18 for by the Sentencing Guidelines?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And do you understand that under certain
21 circumstances you or the government may have the right to
22 appeal any sentence which I impose?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Let me say that again. Do you
25 understand that your right to appeal this sentence has been

1 circumscribed by the terms and conditions in the plea

2 agreement; do you understand what I just said to you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And do you understand that your appeal

5 rights are limited to that which was specifically agreed to in

6 the plea agreement, do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Do you understand that

9 parole has been abolished, and that if you are sentenced to a

10 term of imprisonment, you will not be released on parole?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that if the sentence

13 is more severe than you expected it to be, you will still be

14 bound by your guilty plea and you will have no right to

15 withdraw it?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Except for your discussions with Mr.

18 Cogan about the Sentencing Guidelines, has anybody made any

19 prediction or promise to you about what your sentence will be?

20 THE DEFENDANT: No, sir.

21 THE COURT: Has anything that I've said here today

22 suggested to you what your actual sentence is going to be?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you been instructed by your

25 counsel, by government counsel, or by anybody else to respond

16

1 untruthfully to any question about a promised sentence?

2 THE DEFENDANT: No, sir.

3 THE COURT: Did you, as charged in Count One, and as

4 previously read to you by me commit the offense as charged?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right, Mr. Piccinini, what would be

7 the government's proof here?

8 MR. PICCININI: Your Honor, if the matter proceeded

9 to trial, you would hear testimony from members of the Erie

10 Area Gang Law Enforcement Task Force. Which would establish

11 that in January of this year, it determined that quantities of

12 crack cocaine were likely being stored at a residence at 2702

13 Brandes Street, number two, or upstairs apartment.

14 A search warrant was obtained from United States

15 Magistrate Judge Susan Paradise Baxter. On January 28, 2005,

16 members of the EAGLE Task Force executed the search warrant at

17 that location. At which time, among other items, law

18 enforcement officers located one ounce approximately of crack

19 kind and a digital scale.

20 During the course of that execution of the search

21 warrant, the defendant, Mr. Boyd, arrived on the scene, at that

22 time was willing to talk with law enforcement officers. In the

23 course of his interview with law enforcement, he admitted the

24 approximate ounce of crack cocaine was in fact his, that it was

25 possessed by him with the intent to distribute the crack

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1 cocaine.

2 That crack cocaine was sent off to the Pennsylvania

3 State Police laboratory for testing, and it was determined to

4 weigh 27.1 grams, by scientist Brett Baylor and, in fact, it

5 contained cocaine base in the form commonly known as crack.

6 That would be the nature of the government's proof.

7 THE COURT: All right. Mr. Boyd, you just heard

8 what Mr. Piccinini has said by way of a summary of the facts,

9 do you agree with everything that he said?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you still wish to plead guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Is it your advice that he do so, Mr.

14 Cogan?

15 MR. COGAN: It is, your Honor.

16 THE COURT: All right. Because you acknowledge that

17 you are in fact guilty as charged in Count One, because you

18 know about your right to a trial, because you know what the

19 maximum possible penalty is and because you are voluntarily

20 pleading guilty, I will accept your guilty plea and enter a

21 judgment of guilty on your plea to Count One of Indictment

22 No. 05-22 Erie.

23 It is therefore the finding of the court in the case

24 of United States versus Peirre Duvon Boyd that this defendant

25 is fully competent and capable of entering an informed plea,

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1 and that his plea of guilty is a knowing and voluntary plea

2 supported by an independent basis in fact containing each of

3 the essential elements of the offense and that, therefore, the

4 plea is accepted and the defendant is now adjudged guilty of

5 the charge.

6 Would you please sign the change of plea form.

7 (Whereupon, the Change of Plea was executed by the

8 Defendant and Defense Counsel.)

9 THE COURT: A presentence report will be prepared by

10 the probation office. It is in your best interests to

11 cooperate with the probation officer in furnishing information

12 for that report because that report will important in my

13 decision about what your sentence will be. You and your

14 counsel will have the right and will have an opportunity to

15 examine that report before sentencing.

16 The disposition of sentencing in this case is set

17 for November the 30th, at 8:30 a.m. All right, we're in

18 recess.

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20 (Whereupon, at 1:29 p.m., the Change of Plea

21 proceedings were concluded.)

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1 C E R T I F I C A T E

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5 I, Ronald J. Bench, certify that the foregoing is a

6 correct transcript from the record of proceedings in the

7 above-entitled matter.

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11 _____

12 Ronald J. Bench

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